

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3268 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.L.GOKHALE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? YES.
2. To be referred to the Reporter or not? NO.

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? NO
5. Whether it is to be circulated to the Civil Judge? NO.

VISHWA MANGALAM SHARDA GRAM KELAVANI MANDAL

Versus

COLLECTOR

Appearance:

NANAVATY ADVOCATES for Petitioner
GOVERNMENT PLEADER for Respondent No. 1
MR VIJAY H PATEL for Respondent No. 3

CORAM : MR.JUSTICE H.L.GOKHALE

Date of decision: 14/08/97

ORAL JUDGEMENT

1. This petition is concerning a small vacant plot of Government land adjoining the petitioner-school situated at Himmatnagar, Dist : Sabarkantha. This plot is sought by the school as a play ground and inspite of

an order passed earlier by this Court, no appropriate action is being taken by the respondents. The first respondent is the Collector of Sabarkantha, the second respondent is the State of Gujarat and the third respondent is the Himmatnagar Municipality. I have heard Mr. Chhaya, learned counsel appearing for the petitioner and Mr. A.B.Vyas, Asst. Government Pleader for respondent Nos. 1 and 2 and Mr. Premal Joshi for respondent No.3.

2. The facts leading to this petition are as follows: The petitioner is an educational trust registered under the Bombay Public Trusts Act, 1950, in the year 1982, running a Higher Secondary School at Himmatnagar. It has classes from Junior K.G. to 12th standard and also a Girls College in Arts and Commerce faculties. As per the annexures to the petition, the school had 1305 students in March 1996. It is a Gujarati medium school operating with Government recognition. Adjoining to the petitioner-school, there is a plot of land which is vacant and it admeasures to about 1875 square meters. Some 10 years earlier i.e. on August 14, 1987, the petitioner-school represented to the Collector that the adjoining plot be let out to the petitioner-school for imparting physical education to the students. The school followed up the request by reminders from time to time. It is also seen from the record that ultimately the Collector wrote to the petitioner by his letter dated 28-8-1995, informing that their request dated 14-12-1991 had been rejected by the State Government.

3. Being aggrieved by this approach of the State Government, the petitioner-school was constrained to file a petition which came to be numbered as Special Civil Application No.167 of 1996. It appears that during the course of that proceeding, the State Government was inclined to consider the request of the School to grant land to the extent of 700 or 750 square meters, but not the entire parcel. The petitioner-school thought that if the entire parcel is handed over to the school, that would be better. It was therefore, thought it proper that the petitioner-school should make a fresh application to the Government. The matter was heard by A.N.Divecha, J. who recorded this decision of the petitioner-school to represent to the Government again and directed the State Government by his order dated 13th March 1996 to decide the fate of their application preferably within 2 months from the date of the application. For ready reference the short order of

Divecha, J. is incorporated herewith. It reads as follows :

" Learned Assistant Government Pleader

Shri A.G.Uraizee appearing for the respondents on instructions from the concerned official from the office of respondent No.1 states that it is not possible to grant the land applied for by the petitioner except to the tune of about 700 or 750 square meters therefrom. The petitioner's requirement appears to be for a larger area of 2000 square meters or more. At this stage, learned Advocate Shri P.S. Patel for the petitioner states that the petitioner would like to make a fresh application for the available land from the land in question or some other land of appropriate size and shape for the purpose of the school playground. In that view of the matter, this petition stands disposed of as withdrawn at the instance of learned Advocate Shri P.S.Patel for the petitioner with a view to enabling the petitioner to apply for grant of land as desired. Learned Advocate Shri Patel for the petitioner states that such application will be made by or on behalf of the petitioner on or before 22nd March 1996. Respondent No.1 is directed to decide the fate of that application as expeditiously as possible preferably within two months from its date. This petition accordingly stands disposed of. Notice is discharged with no order as to costs."

4. In view of the aforesaid order, the petitioner-school again wrote to the Collector on 21st March, 1996. In para 3 of their letter, they have pointed out that if urgent steps are not taken, hutments may come up on the land. By the time, the petitioner so represented, it had come to know that a part of that land was likely to be reserved for a State Government project to commemorate the memory of Dr. Ambedkar by putting up Ambedkar Bhavan on the very plot of land. Hence in para 9 of their letter, it pointed out that even if some 1125 square meters of land are allotted to this Ambedkar Bhavan, still the remaining land could be given to the petitioner. Thus, although initially the petitioner had thought of utilising the entire piece of land, in the changed circumstances the school was ready to restrict its request to 750 square meters and in fact as noted above, the Government was likely to entertain that request favourably when the matter was earlier heard before A.N.Divecha, J.

5. It appears that at one end of this parcel of land , an unauthorized activity of cremating dead bodies had started and hence the parents of some of the students also wrote to the respondent No.3- Municipality on 7th April 1997 to prevent that activity, also pointing out that though cremation was carried out in that portion earlier, it had been closed down for years together. The representation to the State Government made by the school on 21st March,1996 was not decided and there was every possibility that the cremating and illegal construction would occupy whole of the land. Hence, the petitioner filed second petition being the present Special Civil Application which was filed on April 21, 1997. In this petition, they had initially prayed that the respondent be directed to decide their application for grant of land, but by way of amendment they have prayed that the respondent be directed to allot the particular land and therefrom 752 square meters to the petitioner. By way of interim prayer, they had initially prayed that respondents be restrained from granting the particular land to any other person and by amendment they have further prayed that pending the decision of the petition, the respondents be directed to allot the concerned land and give possession to the petitioner.

6. This second petition was admitted on 8-5-97 making the Rule returnable on 30-6-97 with status quo with respect to the possession of the land in question. The third Respondent-Municipality was the first one to file its reply. In its reply dated 16-6-1997 the incharge Administrator of the Municipality stated that orders have been issued to stop the construction on the land and use thereof for crematorium, and he annexed a copy of the notice issued in this behalf to his reply.

7. Although the rule was made returnable on 30-6-97, the respondent Nos.1 and 2 did not file their reply in time. When the matter came up before me on 14th July 1997, I asked the State Government to specifically clarify on 4 points. They are as follows.

- "1. How much land is available immediately adjacent to the school.
2. How much land is required by the said Ambedkar Bhavan under the Government policy.
3. If no land is available for the school after providing the land for Ambedkar

Bhavan, whether this Ambedkar Bhavan can be shifted to any other place and

4. When is this Ambedkar Bhavan going to be put up anywhere in the town."

8. The respondent No.1 thereafter filed an affidavit on 23rd July 1997. It has been stated in paragraph 2 thereof that the Ambedkar Samittee has requested for 1750 square meters land, but 1125 square meters land was sanctioned for Ambedkar Bhavan. This particular para 2 of the affidavit is reproduced herewith.

"2) I say that Ambedkar Bhavan Samittee had requested for 1750 sq. Mts. land for said Bhavan. But at that time, 1125 sq. Mts. of land was sanctioned for Ambedkar Bhavan. But seeing the present circumstances more land is required for Ambedkar Bhavan and thus 625 sq. Mts. of land is required to be sanctioned. Remaining land of 125 sq. Mts. is a fragment which cannot be useful for any development activity. Therefore this piece of remaining land also has to be sanctioned for Ambedkar Bhavan only for its future expansion."

9. In view of this affidavit and the further discussion in the Court, I passed another order on 28th July 1997 pointing out to the respondents that even after allotting 1125 square meters land to the Ambedkar Bhavan, 750 square meters will still be available. Mr. Vyas was fair enough to accept that the concerned department had not filed any revision against the grant of only 1175 square meters of land to Ambedkar Bhavan, and that was recorded in the order dated 28-7-97. I recorded the willingness of the petitioner that if the remaining land was allotted to the School, then it will keep the land vacant and will make it available for the activities of the Ambedkar Bhavan and sought the response of the first respondent on this suggestion.

10. The first respondent filed the second affidavit on 2nd August 1997 pursuant to the above order passed by this Court and for the first time raised a contention that the school was in rented premises and that the petitioner-trust is having another plot of land at a walking distance. This second submission of the first respondent is taken in paragraph 5 (C). Paragraph 5 (C) of the second reply is as follows :

5 (C) "It was also inquired if the Trust could be given any other land in the same surrounding and for the said purpose details were taken from the Talati of Himmatnagar about position of different land in surrounding. It was found from Talati that the said Trust is already having a land admeasuring 10,597 sq. meters (more than 2.1/2 acres). This land was purchased by the Trust from private owner, which is in a very short walking distance from the school located in the same village on plot Nos. 31, 49, 32 to 36 and 50 to 74. The Trust has purchased the said land in the year 1992 and this fact was concealed from all including this Hon'ble Court. The said land has been purchased free of stamp duties/ charges as it is taken for public/ education activity by the said Trust. This indicates that the Trust is having adequate land as well as resources to buy new land on its own and it does not appear to be a needy Trust. The said land is open land and capable of being used as a play ground. "

11. This change in attitude of the first respondent brought in a rejoinder by the President of the trust. With respect to the submission that the school is in rented premises, para 9 of the rejoinder states as follows.

"With reference to para 5 of the further affidavit in reply I submit that the school is not to be shifted at any other premises, it is further pertinent to note that the land is developed for a specific purpose of Housing School in it and as the petitioner's school gets grant in aid from the Government the rent for the same is paid by the State Government. I further say and submit that the provisions of the grant in aid code, as well as the Gujarat Secondary Education Act, does not permit transfer of school premises without permission of the State Government. I further say and submit that the owner of the premises is ready and willing to file an undertaking before this Hon'ble Court to the effect that he does not want the possession of the school building in future."

With respect to the other land being available,
para 11 of the rejoinder states as follows.

"With reference to para 5 (c) of the further affidavit in reply I say that the lands referred to are purchased for constructing a college, i.e. run by the petitioner-Trust solely for females. I say that the said college is affiliated to North Gujarat University and the lands in question are at a distance about 2 Kms. from the lands purchased by the petitioner for college."

12. In view of the above rival contentions, Mr. Chhaya, learned counsel appearing for the petitioner pointed out that although the land in question belongs to the State Government, it was within its powers to grant it for appropriate purpose. Under Section 13 of the Bombay Land Revenue Code all such public lands are vested in the State Government and under Section 60 thereof, if any person is desirous of taking up unoccupied land he has to obtain prior permission of the Mamlatdar. Mr. Chhaya also relied upon the judgment of the Supreme Court in the case of Ganapathi National Middle School v. M. Durai Kannan (dead) by Lrs. and others, A.I.R. 1996, S.C.2803 wherein the Supreme Court has held that a private Educational Institution is also an instrumentality or educational agency of the State and even acquisition of land for such an institution would be considered to be public purpose. Mr. Chhaya drew my attention to the rules framed under the Land Revenue Code and submitted that under these Rules no proprietary rights as such are to be given. It is entirely for the Government to decide on what terms the land can be given provided those terms are within the provisions of the Land Revenue Rules. Rule 30 (c) provides that in all grants and disposals of land the right of occupation and use is to be granted subject to the provisions of the Code. Rule 32 provides for the limits of revenue free grants for different purposes. For granting sites to the schools a provision is made in item No.1 of the Schedule under that Rule and Rule 43 (B) provides for disposal of small strips of lands adjacent to occupied unalienated buildings. These are all powers of the State provided it wanted to exercise them.

13. Mr. Vyas, learned A.P.P. appearing for the respondent Nos. 2 and 3 submitted that though the initial requirement of Ambedkar Bhavan was 1125 square meters, as stated in the reply, that requirement may

increase. On pointing out that initially a decision had been taken in favour of such a Bhavan for 1125 square meters and on asking whether any revision or representation has been made against that decision, Mr. Vyas had fairly accepted on 21-7-97 that there was none. As against that Mr. Chhaya drew my attention to the policy decision of the State Government, dated 26th February, 1996, wherein the proposed Bhavan is to be set up, in all Districts. As per para 3 of that resolution (of Education Department), the Bhavan requires an area of 700 square meters. A library and auditorium is supposed to be set up in a large room of the Bhavan. If the requirement as specified in the State Government resolution is for 700 square meters and if already 1125 square meters have been reserved for the Ambedkar Bhavan, one does not know as to why the State Government is denying the grant of remaining 752 square meters to the petitioner school.

14. One contention raised in the reply of the Collector was that the petitioner-school is presently operating from rented premises. Even so, the petitioner school is not asking for any ownership on the small strip of land nor has it proposed to put up any construction. All that it desires is that the small strip of land be made available to it for imparting physical education to the children. Besides, it is also stated in the rejoinder that the owner of the school building did not want the possession of the school building in future and was even ready to give such an undertaking to the Court. The submission of the respondents that the petitioner institution is having another plot of land in a nearby area is belied by the map annexed to the reply filed by the respondent No.1. It shows that the open plot in question in this petition is situated on the western side of the school. Thereafter, comes Himmatnagar to Khed-Tasiya road. Thereafter, there is a canal described as Hathmati canal, then comes the Ahmedabad Himmatnagar Highway. Thereafter comes the Ahmedabad broad gauge railway line and then comes the plot of land where the petitioner-institution is planning to set up a College for girls. Now if a play ground is to be situated at that distance, it certainly cannot be described as situated in near vicinity.

15. As far as the right to education is concerned, it has been already held to be concomitant to fundamental rights by the Hon'ble Supreme Court in the case of Mohini Jain (Miss) v. State of Karnataka and others, (1992) 3 Supreme Court Cases, 666. In that judgment, the Hon'ble Supreme Court referred to the relevant Articles of the

Constitution viz. Article 21, 38, 39 (a) and (f) and 45 which lays down as follows :-

"21. Protection of life and personal liberty:-No person shall be deprived of his life or personal liberty except according to procedure established by law.

"38. State to secure a social order for the promotion of welfare of the people (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social economic and political, shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

39. Certain principles of policy to be followed by the State.- The State shall, in particular, direct its policy forwards securing-

(a) that the citizens, men and women equally, have the right to an adequate means of livelihood ;

* * *

(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.

41. Right to work, to education and to public assistance in certain cases.- The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

45. Provision for free and compulsory

education for children.- The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

16. In paragraph 8 of the judgment, the Supreme Court has referred to the Universal Declaration of Human Rights, 1948 which emphasises that " Education shall be directed to the full development of the human personality " and then quoted the words of Dr.Ambedkar on Directive Principles :-

"In enacting this Part of the Constitution, the Assembly is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power they will have. Surely it is not the intention to introduce in this Part these principles as mere pious declarations. It is the intention of the Assembly that in future both the legislature and the executive should not merely pay lip service to these principles but that they should be made the basis of all legislative and executive action that they may be taking hereafter in the matter of the governance of the country." (C.A.D. Vol.VII Page 476)

17. The judgment finally observed in para 9 that :

" Without making " right to education " under Article 41 of the Constitution a reality the fundamental rights under Chapter III shall remain beyond the reach of large majority which is illiterate."

In para 12 the Court stated that :

" The right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education.

And held in para 14 that :

"The " right to education", therefore, is concomitant to the fundamental rights enshrined

under Part III of the Constitution. The State is under a constitutional mandate to provide educational institutions at all levels for the benefit of the citizens. The educational institutions must function to the best advantage of the citizens. Opportunity to acquire education cannot be confined to the richer section of the society."

18. In *Unni Krishnan, J.P. and Others vs. State of Andhra Pradesh*, 1993 1 S.C.C 645, a Constitution Bench of the Supreme Court again examined this issue. In para 166 it is observed as follows :

" Right to education is implicit in and flows from the right to life guaranteed by Article 21. That the right to education has been treated as one of transcendental importance in the life of an individual has been recognized not only in this country since thousands of years, but all over the world. In *Mohini Jain* the importance of education has been duly and rightly stressed."

19. In these observation of the Supreme Court in the above referred judgments have to become meaningful, the present petition is one such fit case where appropriate directions are necessary. The State of Gujarat is supposed to be a progressive State, but a lot is still to be done in the field of education. Sabarkantha District is a backward District of Gujarat with large tribal population and all that the petitioner-institution is seeking is a grant of a plot for play ground for the benefit of the school students. A needless controversy is set up by the respondents. In fact there cannot be any controversy between the objectives of the school and Ambedkar Bhavan and as stated by Mr. Chhaya, the petitioner will keep the area of 750 square meters vacant and will make it available for the activities of Ambedkar Bhavan also.

20. The first fourteen years of a child's life are recognized as it's formative years. That is a period of life when every child must get a good opportunity for physical development. Physical education, therefore, forms a significant part of education. The children coming from weaker sections of society do not have facilities in this behalf in their neighbourhood nor can their parents afford them. An opportunity for physical education and participation in sports has therefore to be made available to them as part of the schooling programme and is made a part of their curriculum. The importance

of an adjacent play ground for a school can not be emphasised any more.

21, The second affidavit of the Collector shows that he is trying to set up the requirements of the proposed Ambedkar Bhavan against the requirements of the petitioner-school. As stated above, the requirements of the Ambedkar Bhavan under the Government Circular are to the extent of 700 sq. meters. The Government has already sanctioned 1125 sq. meters of land to the Bhavan. That space is yet not utilized. The petitioner-school is going to keep remaining 750 sq. meters vacant and is ready to make it available for the activities of the Bhavan also. In the circumstances, one does not see as to how there can be any conflict between the two requirements. Dr. Ambedkar himself was a great educationist and amongst others education and upliftment of weaker sections was dearest to his heart. The petitioner-school is situated in a predominantly tribal district. In fact as and when a library and community hall is set up in Ambedkar Bhavan, it will be the students of the petitioner-school who will make the best use thereof. The Collector in his earlier affidavit dated 23rd July 1997 states in paragraph No.2 "seeing the present circumstances more land is required for Ambedkar Bhavan." these present circumstances are also not spelt out. This type of a contentious attitude on the part of the State authorities is most undesirable.

22. Therefore, Mr. Chhaya presses for the mandamus in terms of the added prayer (12 AA) viz a direction to allot the sub plot of 750 sq. meters to the petitioner-school. Mr. Vyas, the learned A.G.P. on the other hand submits that at the highest this Court ought to give another direction to decide the pending representation of the petitioner. Mr. Chhaya states that such a direction was given earlier by Divecha, J. and it is no use giving similar direction again. Besides, in view of the contentious reply filed by the Collector, there is every chance that this direction will meet the same fate as the earlier one. Mr. Chhaya submits that when the power of disposal of public lands is retained in the government, it has to be exercised for good causes. Undoubtedly, there is a force in Mr. Chhaya's submissions. When there is a power retained in the Government in the Land Revenue Code, it has got to be read coupled with the duty to exercise it for public good. In a sense the political and administrative executives are trustees of the people and they must discharge their duties for the benefit of the beneficiaries i.e. the society at large. However,

having noted this position, I cannot as well ignore that it is for the State Government to take its decision and the power in that behalf is to be exercised by the appropriate authority. Hence, although it is true that one direction had been given earlier by another Judge (and it has failed), yet I deem it proper to direct the State Government once again as per prayer clause 12 (A) to hear and decide the application of the petitioner which has remained undecided so far. The State Government shall decide petitioner's representation dated 21-3-96 in the light of the above observations and after considering all relevant factors. The representation will be decided expeditiously.

23. Since I am not inclined to issue the mandamus to allot the land, Mr. Chhaya has drawn my attention to the representation of the school and the difficulties that it has been facing namely that the adjoining plot is likely to be encroached by hutments or likely to be used for cremating activity. He, therefore, submits that in the circumstances, an interim arrangement is necessary till the decision of the Government. He submits that unless the petitioner puts up a fencing in the meanwhile to protect the land and starts using the play ground for the benefit of the students, the encroachments cannot be prevented. This submission is made since the request of the school was originally made ten years ago and there is every chance that in further delays and litigation the land will get encroached. In my view, this submission has to be accepted in the peculiar facts and circumstances of the case. Therefore, it is hereby directed that pending the determination on the representation, if the petitioner-school puts up at its own cost a fencing around the sub plot of 750 square meters land (as shown in the map annexed to the Collector's reply), the State shall not take any steps to remove such fencing. Mr. Vyas submits that instead of such an interim arrangement, the Government be asked to decide the representation in specified time. The past performance of the respondents in this behalf does not inspire confidence. Such a direction specifying time was given by Divecha, J. and the same had no effect. The direction was to decide the representation in two months yet the representation dated 21-3-96 has remained undecided for nearly a year and half and the request for grant is still being opposed. Another direction may also take its own time at the level of the State Government. In the meanwhile if the plot of land gets encroached, neither will the Ambedkar Bhavan come up on the plot nor will it become available for the students of the school. In fact, it is desirable that respondent Nos. 1 and 2

put up fencing around the remaining 1125 square meters of land also at the earliest so that, the plot is saved for Ambedkar Bhavan as well.

24. In the facts and circumstances of this case, the rule issued in this petition is made absolute in terms of prayer clause 12 (a) directing the Government to decide petitioner's representation dated 21-3-1996 expeditiously. This order is with a further interim direction that if in the meanwhile the petitioner-school is required to put up a fencing around the sub plot of 750 square meters and uses the play ground for the physical education of the students, the State shall not in any manner remove the fencing nor shall prevent the use of the ground by the school. The State is of course at liberty to decide in such a situation as to what charges or fees should be collected from the petitioner for this interim user. The State Government will hear the petitioner trust and pass a reasoned order on its representation. In case the representation is rejected, the interim direction given above will continue to operate for a period of four weeks thereafter, though it is hoped that such an occasion will not arise. Parties will bear their own costs.

25. Mr. Vyas prays for stay of this order for 6 weeks. It is not possible to entertain this request in the circumstances narrated above and the same is rejected.

* * * *

Mithabhai.